

Judge: Timothy W. Dore  
Chapter: 13  
Hearing Date: August 15, 2018  
Hearing Time: 9:30 am  
Hearing Location: U.S. Bankruptcy Court  
700 Stewart St #8106  
Seattle, WA 98101  
Response Date: August 08, 2018

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

In Re:

SINPRASEUT PHOMMA,

Debtor.

IN CHAPTER 13 PROCEEDING  
NO. 18-12071

NOTICE OF TRUSTEE'S MOTION TO DISMISS  
CASE AND HEARING

PLEASE TAKE NOTICE that the Chapter 13 Trustee's Motion to Dismiss Case IS SET FOR HEARING as follows:

Judge: Timothy W. Dore  
Place: U.S. Bankruptcy Court  
700 Stewart St #8106  
Seattle, WA 98101

Date: August 15, 2018  
Time: 9:30 am

IF YOU OPPOSE the motion, you must file your written response with the Court Clerk NOT LATER THAN THE RESPONSE DATE, which is August 08, 2018.

IF NO RESPONSE IS TIMELY FILED, the Court may, in its discretion, GRANT THE MOTION PRIOR TO THE HEARING WITHOUT FURTHER NOTICE, and strike the hearing.

Date: July 20, 2018

/s/K. Michael Fitzgerald  
K. Michael Fitzgerald, WSBA# 8115  
Chapter 13 Trustee

NOTICE OF TRUSTEE'S MOTION TO DISMISS CASE  
AND HEARING

Chapter 13 Bankruptcy Trustee  
600 University St. #1300  
Seattle, WA 98101  
(206) 624-5124

Judge: Timothy W. Dore  
Chapter: 13  
Hearing Date: August 15, 2018  
Hearing Time: 9:30 am  
Hearing Location: U.S. Bankruptcy Court  
700 Stewart St #8106  
Seattle, WA 98101  
Response Date: August 08, 2018

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

In Re:

SINPRASEUT PHOMMA,

Debtor.

IN CHAPTER 13 PROCEEDING  
NO. 18-12071

TRUSTEE'S MOTION TO DISMISS CASE

The Trustee moves to dismiss this case pursuant to 11 U.S.C. § 1307(c):

The debtor filed a plan on May 24, 2018 (ECF No. 2).

The debtor has failed to make plan payments and is delinquent \$3,338.46.

The debtor's case was filed on May 24, 2018 (ECF No. 1). 1) The above delinquency includes the July 2018 plan payment, which will be due by July 24, 2018. The debtor is delinquent on payments, but a wage deduction is now in effect. Provided the debtor does not become any further delinquent on her plan payments, this may not be an issue. 2) Based on the claim filed by Monterey Park Homeowners Association (ECF Claim No. 2), the debtor needs to increase the periodic payment for the Monterey Park HOA arrears in Section IV.C.1. to approximately \$41.00/month. In addition, the debtor needs to amend the plan to provide for 12% interest on the HOA arrears in Section IV.C.1. 3) The debtor's plan (ECF No. 2) provides for payment of the 2006 Acura in Section IV.C.3.a. However, the creditor, OneMain Financial, filed an unsecured claim (ECF Claim No. 4). The debtor needs to amend the plan to remove the 2006 Acura from Section IV.C.3.a., since the creditor does not appear to be asserting a security interest in this vehicle. 4) The debtor's plan provides for the following language in Section X.B.: "Second mortgage to ServiSolutions is not due until the sale of the property and will not be paid or due during the life of the plan." The debtor needs to file a sworn declaration with the Court, including attached supporting documentation, in

TRUSTEE'S MOTION TO DISMISS CASE - 1

Chapter 13 Bankruptcy Trustee  
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support of the debtor's factual assertion in the plan. 5) The debtor needs to address the Trustee's Objection to Exemptions (ECF No. 15). 6) Based on the debtor's schedules (ECF No. 1, Schedule I), the debtor receives \$950.00/month from her mother. Only an individual with regular income may be a debtor under Chapter 13. 11 U.S.C. § 109(e). An individual with regular income means an individual whose income is sufficiently stable and regular to enable that individual to make payments under a chapter 13 plan. 11 U.S.C. § 101(30). Gifts or gratuitous payments from family or friends do not qualify as regular income. See *In re Cregut*, 69 B.R. 21, 22-23 (Bankr. D.Ariz. 1986); *In re Hanlin*, 211 B.R. 147, 148 (Bankr. W.D.N.Y. 1997). However, where the family member or friend commits to making the payments to allow the debtor to fund his or her plan and there is direct evidence of that commitment, those payments can constitute regular income. See *In re Campbell*, 38 B.R. 193, 196 (Bankr. E.D.N.Y. 1984); *In re Jordan*, 226 B.R. 117, 119 (Bankr. D.Mont. 1998). To establish that regular income, the debtor needs to file a sworn declaration from the family member or friend committing to make the payments to the debtor so that the debtor can qualify as a debtor under Chapter 13. Without that evidence, the debtor is not eligible to be a debtor under Chapter 13 if his or her ability to fund the plan depends on gratuitous payments from family or friends. The debtor needs to file a sworn declaration from her mother regarding the monthly support received by the debtor. The Trustee reserves the right to assert additional bases for this motion. If the debtor fails to address the issues set forth in both the Trustee's Objection and Motion to Dismiss, the case should be dismissed.

THE TRUSTEE REQUESTS that the Court dismiss this case.

Dated: July 20, 2018

/s/ K. Michael Fitzgerald  
K. Michael Fitzgerald, WSBA #8115  
Chapter 13 Trustee

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10 **IN THE UNITED STATES BANKRUPTCY COURT**  
11 **FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

12 In Re:

13 SINPRASEUT PHOMMA,

14 Debtor.  
15

IN CHAPTER 13 PROCEEDING  
NO. 18-12071

*Proposed*  
ORDER DISMISSING CASE

16 THIS MATTER having come before the Court on the Chapter 13 Trustee's Motion to Dismiss Case, and the  
17 Court having reviewed and considered the motion, records and files in this case, it is

18 ORDERED that this case is dismissed.

19 // /End of Order/ //  
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22 Presented by:

23 /s/K. Michael Fitzgerald

24 K. Michael Fitzgerald, WSBA# 8115

Chapter 13 Bankruptcy Trustee

600 University St. #1300

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(206) 624-5124  
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ORDER DISMISSING CASE

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